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March 28, 2005

Mr. Gary M. Jackson,
Assistant Administrator for Size Standards
409 Third Street, SW
Washington, DC 20416

Re: RIN 3245-AF22

Dear Administrator Jackson:

This is a formal response to Advance Notice of Proposed Rulemaking of 13 CFR Part 121 issued September 15, 2004. My comments pertain only to the section, "Participation of businesses majority-owned by Venture Capital Companies in the SBIR Program.

The purpose of the Small Business Innovation Development Act (SBIDA), as noted in the new ownership requirements promulgated November 29, 2004 (13CFR, Part 121, Section 121.702) "... was, and still is, to encourage small business participation in R&D to stimulate the American Economy." As was noted in H.R. Rep. No. 349, 97 Cong., 1st Sess., pt. 1 at 9 (1981), "Federal support for R&D was concentrated in big businesses, laboratories, universities, and non-profit organizations. It was believed that this concentration of private R&D in a few large entities was contrary to the national interest **and that small science and technology-based enterprises, thought of as the most innovative sector of the American economy**, was excluded from effective participation." (Emphasis added)

The allowability of 51% ownership in small business concerns (SBC's) by for-profit entities is worrisome because it opens up loop-holes for large entities to slip through. However, in reading the revised regulations, the affiliation rules appear to minimize that possibility.

The affiliation rules as presently described in 13CFR 121.103, are not confusing and appear to minimize large enterprises getting SBIR funding. They should not be changed. The exclusions referred to in the regulations are related to the Small Business Investment Act of 1958 and not the Small Business Innovation Development Act. The different rules of affiliation should be maintained because of the aforementioned purpose of the SBIDA.

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If a Venture Capital Company (VCC) is owned by a large institution or enterprise, then through attribution, those large organizations should be treated as affiliated with any investment the VCC's make and counted toward the 500 employee limit. By excluding them from the affiliation rules, you effectively provide entrée into the SBIR program by large enterprises. The House Report referred to above stated that such large enterprise involvement is **"contrary to the national interest."** (Emphasis added)

The SBIR program is designed to obtain proof of concept and prototype development of "leading edge," if not "bleeding edge" technologies. Small business has historically been proven to be the most nimble and innovative in this process and venture capital has historically looked to fund commercialization. Commercialization is Phase III of the SBIR process. Under SBIR Policy Directive, 67 FR 60072 issued September 24, 2002, a Phase III awardee does not need to meet the size standards imposed on the Phase I and Phase II awardees. Therefore, there is no need to change the rules of affiliation because in Phase III, size standards do not impact the funding.

As to those who cite the need for higher levels of funding required for biotechnology discovery, I would suggest that the receipt of an SBIR award reduces the risk of investment because the government is validating a need for the technology. In addition, a company venture backed, is now more focused on the business than the science and may not be as willing to risk failure. SBIR involvement takes some of the risk out of the development because, other than the company itself, no other investor is at risk. Feasibility may not be reached, and even if feasible, the prototype may not work. These failures beget additional research and increase future success. If the entrepreneur is not beholden to institutional investors, he/she may be more willing to continue to push the envelope as long as the government continues to have an interest in the science.

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I firmly believe that the "Commercialization" component of the SBIR program is crucial to its success; however, if research and development always leads to a commercial product, then the technologist is not pushing hard enough. For superior technology to evolve some failure in the research is an option. Small business has proven to be willing to innovate and take more risks. The potential that this would be stultified because of large institutional investors owning a controlling interest is in direct contradiction to the intent of the law.


I urge you to leave 13 CFR 121.103 untouched in order to insure this important run of innovation.

I would be please to answer any questions that you might have on this issue.

Thank- you for your time.

Very truly yours,

LEVINE, KATZ, NANNIS + SOLOMON, PC

A handwritten signature in cursive script, appearing to read "Lawrence S. Nannis".

Lawrence S. Nannis CPA